

Palmer A. Hoovestall, Esq.
Hoovestall Law Firm, PLLC
40 W. 14th Street, Suite 4C
P.O. Box 747
Helena, MT 59624-0747
Tel. (406) 457-0970
Fax (406) 457-0475
email: palmer@hoovestall-law.com
Attorney for Defendant
ROBERT DARRYL WAR CLUB

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

| |
|--|
| UNITED STATES OF AMERICA, Plaintiff, v. ROBERT DARRYL WAR CLUB, Defendant. |
|--|

| |
|--|
| Cause No. CR 08-126-GF-SEH DEFENDANT'S TRIAL BRIEF |
|--|

COMES NOW the Defendant, ROBERT DARRYL WAR CLUB, by and through the Undersigned Attorney of Record, and pursuant to the Court's Order of April 20, 2011, (Doc. No. 160) hereby submits this trial brief.

INTRODUCTION

On April 20, 2006, Richard Green was found murdered on his garage floor.

The Government charged Robert War Club with First Degree Murder. The Government's case against War Club is circumstantial. Even though it has the murder weapon which was found at the scene of the crime, a red-handled butterfly knife, the Government has no hard evidence that War Club killed Richard Green.

War Club absolutely denies that he killed Richard Green. He has asserted an alibi defense and will present evidence that Alvin Linville had the motive and opportunity to kill Green, told Jayni Anderson that he intended to kill Green, and in fact told Jayni Anderson when and how Green had been killed even before Green's body had been found.

THE GOVERNMENT'S CASE

The Government will present the testimony of the following significant witnesses and War Club will refute each witness's testimony as follows:

Arnold Douglas – Timing

Arnold Douglas will testify that he gave War Club a ride to Richard Green's driveway on April 20, 2006. The Government will attempt to establish that this occurred *before* Douglas went to the Indian Health Service to do his labs at 9:55 a.m. See, Govt's Trial Brief, p. 6. However, Douglas testified at the first trial that he went from Glendive straight to the IHS in Wolf Point to do his labs, which occurred at 9:55 a.m. It was only *after* he did his labs that he went to his sister's

house at which time he saw War Club and then gave him a ride. See, *Trial Trans.*, 289:6-8 (“Because as soon as I came to Wolf Point from Glendive, I went directly to the Indian Health Service to get my labs done. And that was at 0955.”)

On May 5, 2006, Douglas also told FBI SA Susan Phillips that he first went to the diabetic lab at the Indian Health Services in Wolf Point, and then he went to his sister’s house where he saw War Club, at which time he gave War Club a ride to Dick Green’s residence. Douglas told Phillips that he dropped War Club off at Green’s house between 10:00 and 10:30 See Exhibit A.

In short, Douglas testified that he went *directly* from Glendive to the Indian Health Service in Wolf Point to get his labs done, and *then* he visited his sister. Contrary to the Government’s assertion, he did not state that he dropped War Club off, then went to the IHS and got his labs done, and then visited his sister. Rather, after he dropped off War Club he went back and visited his sister for about an hour before going to Poplar.

The importance of this timing is that Richard Comes Last testified that he arrived at Dick Green’s house at 10:00 a.m and stayed there for a grand total of 45 minutes. During that time he did not see Robert War Club there, or did he see War Club delivered there by Arnold Douglas. *Trans.*, 220:9 to 221:21; 234:8-13; 240:1-3; 241:11-19.

War Club will testify that he did not receive a ride from Arnold Douglas to Green's residence on April 20, 2006, or ever, for that matter.

Don Sharp – In League with Al Linville

At the first trial Don Sharp testified that he sold the red butterfly knife found at the scene of the crime to War Club. *Trans.*, 381:2 to 382:6. War Club denied it. *Trans.*, 705:10 to 705:20. It is expected that this testimony will be the same during the second trial. As set forth below, Jayni Anderson will testify that Al Linville gave Don Sharp Richard Green's share in Linville's shop because Linville owed Sharp a favor.

Importantly, Don Sharp told the FBI that he also personally sold a butterfly knife to Bill Beaudry, Dale King, Amos Bridges, Rodney King, and Kevin Jackson. *Trial Trans.*, 470:14 to 471:16. However, every person to whom Don Sharp said that he sold a butterfly knife, denied that he had done so. *Trial Trans.*, 470:14 to 471:21; *cf.*, 211:11 to 212:10 (Dale King); Doc. No. 179-1 (Bill Beaudry); Doc. No. 179-2 (Kevin Jackson). Bill Beaudry, Amos Bridges, and Roderick King each specifically denied ever having purchased a butterfly knife from Don Sharp.

Large Amounts of Cash

Richard Green was killed on April 20, 2006. The Government will call

various witnesses who will testify that they saw War Club with cash immediately after Green was killed even though these witnesses were interviewed by the FBI some 20 months after Green was killed:

| <u>Witness</u> | <u>Interview Date</u> |
|-----------------------|---|
| Grace Deveraux | February 12, 2008 |
| Jennifer Haugen | February 20, 2008 |
| Antoinette Shields | January 22, 2008 February 20, 2008 March 13, 2008 |
| Arlie Shields | January 22, 2008 March 13, 2008 April 9, 2008 |

War Club had worked for the FBI as a confidential informant and he purchased drugs using cash provided by the Government only months before Dick Green's death. He was "deactivated" on March 24, 2006 – less than a month before Richard Green was killed – because his cooperation was completed. His deactivation papers indicate that "[o]n numerous occasions, source [War Club] conducted controlled purchases of marijuana and prescription drugs on the Fort Peck Tribes Indian Reservation." See Exhibit B.

If these witnesses did, in fact, see War Club with cash, some 20 months earlier, then it very well could have been the money utilized in his activities as an

undercover informant for the FBI, or from money he received from his lump sum Worker Compensation settlement. Evidence relating to War Club's undercover activities and Worker's Compensation settlement directly refutes the Government's contention that the cash War Club had was stolen from Richard Green.

The Fiber

Joshua Friedman, a fiber analyst from the Trace Evidence Unit of the FBI lab, has re-examined the fiber evidence in this case and determined that the known fiber taken from War Club's shirt that was seized by law enforcement is now *different* from the fiber that was found in Richard Green's body bag. The Government may contend that the difference could be the result of exposure to sunlight sometime between the first trial and the second trial. It is highly unlikely that the fiber evidence in this case was inadvertently left on a windowsill exposed to sunlight at the FBI lab.

Defense expert Skip Palenik will provide testimony relating to this issue, and will contradict the Government's photo-oxidization theory.

The Hair

The Government's expert, Catherine Theissen, has acknowledged that the hair evidence cannot be attributed to Robert War Club and that there is a

difference between the hair from the body bag and Crystal War Club's known hair. Notwithstanding that, the Government's expert testified at trial that she "cannot exclude" Crystal War Club as the source of the hair. *Trial Trans.*, 442:16-22.

If there is a difference between the hair from the body bag and Crystal War Club's known hair, then the difference means that they are different hairs. They are not the same and the Government cannot prove that they are the same.

THE DEFENSE

Alvin Linville killed Richard Green

Jayni Anderson was very well acquainted with Dick Green prior to his death. She was also well acquainted with Betty Green, Tom Green, Gail Green, and Al Linville. She is good friends with all of them and knows them very well.

Al Linville has a romantic interest in Anderson. Although the feelings of romance are not reciprocated by her, Linville confides in her and frequently shares intimate details of his life with her.

Linville lives across the road from Dick Green's residence in a shop that they owned together. Linville knew Green very well and was familiar with Green and his personal habits. Linville knew where the remote was in Green's residence and how to operate it to open the garage. The two were business partners in a shop that Green wanted to buy from Linville because Green needed more room for

his pawn business. In February, March, and April of 2006, Jayni Anderson lived in Butte, Montana, and Al Linville would call her regularly to chat. During these telephone conversations Linville told Anderson that he was angry with Dick Green because of their business dealings in the shop. Linville was living there and Green wanted him to move out. Green also wanted Linville to pay his half of the taxes and the power bill and Linville was angry about that because he did not think that he should have to pay. Dick Green made an offer to Linville to buy him out, and Linville said no, he would not be bought out. Linville was behind on some bills and it was stressing him out.

On four to six occasions during the months of February, March, and April of 2006, Linville expressly told Anderson that he was going to kill Dick Green. It was more than just bluster and seemed to Anderson to be a statement of intent. Linville told Anderson that it would be a simple matter to cross the road, kill Green, and then slip back across the road to the shop.

On the morning of April 20, 2006, sometime between 8:00 and 10:00 a.m., Linville called Anderson and told her that Dick Green was dead. His specific words were "Jayni, Dick Green is now dead." He also told her how Green had been killed. Linville specifically told her that Green was hit on the back of the head with either a two-by-four or a baseball bat and that his throat had been cut.

This was related to her by Linville before Green's body had been discovered later that evening by his daughter, Stacy Green-Headdress. Anderson remembers that because it was a Thursday and she had to go to a business meeting that morning at Town Pump where she worked as a cashier. After Green's death, Linville frequently talked about the incident on a regular basis. He seemed to be fixated by Green's murder. After Green's death, Linville also stated that he wanted to leave Wolf Point. Linville has expressed to Anderson that he wants to kill himself.

In April of 2006, Don Sharp lived next to Green's and Linville's shop. Linville and Sharp were good friends and Linville set up Sharp in Sharp's knife business, Don's Cutlery. After Green's death, Linville gave Don Sharp Green's interest in the shop, because Linville "owed him a favor." Jayni Anderson has also seen Don Sharp forge documents in the past.

The Government has indicated in briefing that "the cellular telephone Anderson claims was the phone on which she received the calls from Linville was not in operation during that time period." See, Doc. No. 173, p. 3. That contention is false, as an FBI 302 dated May 26, 2006, clearly shows that Jayni Anderson's telephone number was 406-498-0488. See Exhibit C.

The Government will also attempt to impeach Anderson on the ground that she has mental issues and obtained psychological treatment after she had been

violently raped. War Club will object to this evidence at trial under Rule 403.

War Club will also present alibi evidence to the effect that he was at home when Richard Green was killed.

He will also present testimony of his shoulder injury and that he was physically unable to engage in the violent acts that killed Richard Green.

WITNESSES

War Club will present the testimony of the following witnesses in his case in chief:

1. Steven J. Klepps, MD
Ortho Montana
2900 12th Ave. No., Suite 100, East Building
Billings, MT 59101
Tel. 1-800-299-6708
2. Ronald O. Isackson, MD
Dakota Bone and Joint
109 7th St. W.
Dickinson, ND 58601
Tel. 701-483-2973
3. Alvin Linville
7268 U.S. Highway 2 East
Wolf Point, MT 59201
Tel. 406-653-3577
Cell 406-650-3450
4. Jayni L. Anderson
5100 Roosevelt Ave.
Poplar, MT 59255
P.O. Box 311

Wolf Point, MT 59201
Cell 406-650-3185

5. Kenneth Heser
102 Sunnyside Road
Wolf Point, MT 59201
406-525-3687
6. Leann Smith
701 Listerud St
Wolf Point, MT 59201-1824
(406) 653-3251
7. Jennifer Zimmerman
Southside School Secretary
Wolf Point School District No. 45-45A
District Office
220 4th Ave South
Wolf Point, MT 59201-1528
406-653-2361
8. Sherry Heser, Clerk
Wolf Point School District No. 45-45A
District Office
220 4th Ave South
Wolf Point, MT 59201-1528
406-653-2361
9. Patricia War Club
P.O. Box 4
108 E. Edgar
Wolf Point, MT 59201
Tel. 406-650-5142
10. Roberta War Club
P.O. Box 4
108 E. Edgar
Wolf Point, MT 59201

Tel. 406-650-5142

11. Crystal War Club
P.O. Box 4
108 E. Edgar
Wolf Point, MT 59201
Tel. 406-650-5126
12. Bill Beaudry
112 Helena Street
P.O. Box 914
Wolf Point, MT 59201
Tel. 406-650-5310
13. Kevin Jackson
920 West Blaine
Wolf Point, MT 59201
14. Amos Bridges
611 Listerud
Wolf Point, MT 59201
Cell 406-672-3425
15. Roderick King
Wolf Point, MT 59201
16. Skip Palenik
Microtrace LLC
790 Fletcher Drive, Suite 106
Elgin, IL 60123
Tel 847-742-9909
Fax 847-742-2160
17. Robert War Club

EXHIBITS

The Defense will also offer various exhibits into evidence at trial, including

the exhibits offered in the previous trial, as well as various records pertaining to the FBI's use of War Club as a confidential informant.

DATED this 6th day of July, 2011.

RESPECTFULLY SUBMITTED:

By: /s/ Palmer A. Hoovestal

Palmer A. Hoovestal
Attorney for Defendant

CERTIFICATE OF SERVICE

L.R. 5.2(b)

I hereby certify that on July 6, 2011, a copy of the foregoing document was served on the following persons by the following means:

1, 2 CM-ECF

___ Hand Delivery

3 Mail

___ Overnight Delivery Service

___ Fax

___ E-Mail

1. CLERK, UNITED STATES DISTRICT COURT

2. LORI HARPER SUEK, ESQ.
United States Attorneys Office
P.O. Box 1478
Billings, MT 59103
Counsel for the United States of America

3. Robert War Club
Defendant

By: /s/ Palmer A. Hoovestal

Palmer A. Hoovestal
Attorney for Defendant